

RECORDING REQUESTED BY:

Durkee Properties, LLC
3655 Collins Avenue
Richmond, California 94806
EPA ID # CAD 009 137 779
Attention: Donald L. Jones, Manager



CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder
DOC- 2007-0151424-00

Wednesday, MAY 23, 2007 13:52:10

MIC \$1.00 MOD \$15.00 REC \$19.00

FTC \$14.00

Ttl Pd \$49.00

Nbr-0003722052

lrc/R9/1-15

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, California 94710
Attention: Mohinder Sandhu, P.E., Chief
Standardized Permitting and Corrective Action Branch

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Re: "County of Contra Costa APN(s) 408-060-012," Former Witco Corporation
Site/Durkee Properties, LLC and Department of Toxic Substances Control
(Department) Site Code Number 200207

This Covenant and Agreement ("Covenant") is made by Durkee Properties, LLC (the "Covenantor"), the current owner of property situated in Richmond, County of Contra Costa, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and Department, collectively referred to as the "Parties", hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code section 25202.5 that the use of the Property be restricted as set forth in this Covenant; and the Parties further agree that the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 8.45 acres is more particularly described and depicted in Exhibit "A" attached hereto and incorporated herein by this reference. The Property is located in the area now generally bounded by Morton Avenue to the north, Southern Pacific Railroad to the west and Collins Avenue to the east, County of Contra Costa, State of California. The Property is also generally described Contra Costa County Assessor's Parcel No. 408-060-012.

1.02. The Property is being remediated pursuant to the Corrective Action Consent Agreement, HWCA P2-98-004 ("Consent Agreement") between Chemtura (Witco's successor) and the Department of Toxic Substances Control (Department). The Consent Agreement defined the steps and corresponding scope of work for federal Resource and Conservation and Recovery Act (RCRA) corrective action with respect to the irregularly shaped 8 acres of land now owned by Durkee Properties, LLC. The Consent Agreement requires the continuation of groundwater monitoring and completion of the corrective action which addresses tetramethyltetrahydrofuran (TMTHF) and benzene in the groundwater plume. A Corrective Measures Study (CMS) Report dated May 26, 2005, Land Use Covenant Implementation and Enforcement (LUCI&E) Plan and the California Environmental Quality Act (CEQA) Notice of Exemption (NOE) were made available for public comment from August 11, 2006 to September 26, 2006. The CMS Report and the LUCI&E Plan were approved by DTSC on March 15, 2007. The approved remedies described in the May 2005 CMS Report are:

- (1) Installing and conducting dual-phase vapor extraction at designated area between former Ponds 1 and 2;
- (2) Periodical groundwater sampling to confirm that tetramethyltetrahydrofuran (TMTHF) levels are below the cleanup goal of 2,300 parts per billion (ppb);
- (3) Monitoring the natural attenuation of benzene to verify that it has

- decreased below the cleanup goal of 1 ppb;
- (4) Monitoring the Site for an additional five years to confirm that cleanup goals have been achieved;
 - (5) Entering into a Land Use Covenant between DTSC and current land owner; and
 - (6) Conducting an annual inspection of the Site to ensure that future land use remains industrial and that no drinking water wells are installed on the Site.

1.03. A site specific Health Risk Assessment (HRA) dated March 2004 was prepared for the Property. All organic chemicals detected in onsite vadose zone and groundwater was included in the risk assessment as chemicals of potential concern (COPCs). The ranges of COPCs detected in some wells in on-site groundwater and which are used in the HRA are tetramethyltetrahydrofuran (TMTHF), benzene, chlorobenzene, isopropylbenzene, toluene, trichloroethene (TCA), trichloroethane (TCA), and phthalate. Some metals which included arsenic and lead were detected in soil. COPCs from offsite sources included tetrachloroethene and vinyl chloride (VC) in groundwater and xylenes in soil. The results of the HRA showed that greater risk exists only if onsite residents are exposed to surface soil, construction-zone soil and groundwater. The Department concluded that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human health or the environment, if limited to commercial and industrial use.

ARTICLE II

DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.03. Improvements. "Improvements" includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.04. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.05. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.06. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions, that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Health and Safety Code section 25202.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee written notice of the existence of this Covenant and its Environmental Restrictions.

3.04. Incorporation into Deeds and Leases. This Covenant and its Environmental Restrictions shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number (APN) noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.06. Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Covenantor hereby covenants for the Covenantor and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's cost in administering the Covenant.

ARTICLE IV
RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- a. A residence, including any mobile home or factory-built housing, constructed or installed for use as residential human habitation.
- b. A hospital or hospice for humans.
- c. Park and recreational use.
- d. A public or private school for persons under 21 years of age.
- e. A day care center for children.

4.02. Restricted Uses and Improvements: The use of the Site shall be restricted to commercial, industrial, research and development, hotel, retail and office purposes only, any other use permitted by the Zoning Ordinance (Richmond Municipal Code section 15.04), and any other use permitted by any amendment to the aforementioned Zoning Ordinance, provided that the use is consistent with the prohibited uses and prohibited activities listed above.

4.03. Prohibited Activities. The following activities shall not be conducted at the Property:

- a. Raising of cattle, food crops, or agricultural products.
- b. Drilling for water, oil, or gas.
- c. Extraction of groundwater for purposes other than site remediation, groundwater monitoring, or construction dewatering.
- d. Any activities that may interfere with the selected remedy or operation and maintenance activities required for the Site

4.04. Soil Management: Activities that will disturb the soil at or below the level of shallow groundwater, such as excavation, grading, removal, trenching, filling, earth movement or mining, shall only be permitted on the Site pursuant to a Soil Management Plan and a Health and Safety Plan approved by the Department. Any

contaminated soils brought to the surface by any such activities shall be managed in accordance with all applicable laws and regulations.

4.04 Non-Interference with Groundwater Monitoring Wells and Remediation Wells: Activities that may disturb the groundwater monitoring wells and remediation wells (e.g., excavation, grading or removal of soil; trenching; filling; earth movement; or mining) shall not be permitted on the property without prior review and approval by the Department. All uses and development of the property shall preserve the integrity and physical accessibility of the groundwater monitoring wells and remediation wells.

4.05. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.05. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the operation and maintenance of the corrective action remedy shall have reasonable right of entry and access to the Property for the purpose of implementing the operation and maintenance requirements for the remedy until such time as DTSC determines that no further operation and maintenance is required.

All owners or occupants of any portion of the Property by their purchase, leasing, or possession of such property, are bound by the LUC and agree that the restrictions in the LUC must be adhered to for the benefit of future owners and occupants and that their interest in the property shall be subject to the restrictions contained in the LUC.

The Owner of the Property shall provide notice to the Department no later than thirty (30) days after the conveyance of any ownership interest in the Property (except for building space leases, mortgages, liens, and other non-possessory encumbrances).

ARTICLE V
ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil or criminal actions, as provided by law.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.

6.02 Termination or Modification. Owner, or any other aggrieved person, may apply to the Department for a termination or modification of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03 Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibit, in the County of Contra Costa within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

Mr. Donald L. Jones, Manager
Durkee Properties, LLC
2228 Livingston Street
Oakland, California 94606

and

To Department:

Mohinder Sandhu, P.E., Chief
Standardized Permitting and Corrective Action Branch
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, California 94710-2721

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If this Covenant or any of its terms are determined by a

court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

7.07 Inspection and Reporting Requirements. The Owner shall conduct an annual inspection and submit an Annual Inspection Report to the Department for its approval by January 15th of each year. The annual report, must include the dates, times, and names of those who conducted and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual report (e.g., drive by, fly over, walk in, etc.) If violations are noted, the annual report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within 10 days of identifying the violation: determine the identity of the party in violation, send a letter advising the party of the violation of the Covenant and demand that the violation ceases immediately. Additionally, copies of any correspondence related to the enforcement of this Covenant shall be sent to the Department within ten (10) days of its original transmission.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Durkee Properties, LLC

By: //ORIGINAL SIGNED BY//

Title: Donald L. Jones, Manager

Durkee Properties, LLC

Date: 3/26/07

Department of Toxic Substances Control

By: **//ORIGINAL SIGNED BY//** _____

Title: Mohinder S. Sandhu, P.E., Chief

Standardized Permitting and Corrective Action Branch

Department of Toxic Substances Control

Date: April 5, 2007

STATE OF CALIFORNIA)

COUNTY OF Alameda)

On this 26th day of March, in the year 2007,

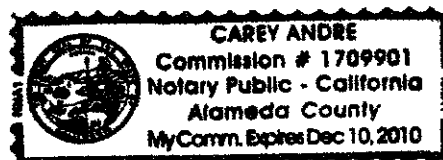
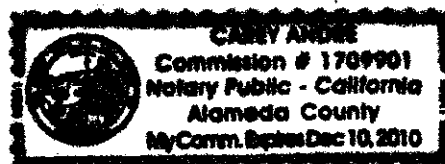
before me Carey Andre, notary public, personally appeared

Donald L. Jones

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature **//ORIGINAL SIGNED BY//**



ACKNOWLEDGMENT

State of California

County of Sacramento

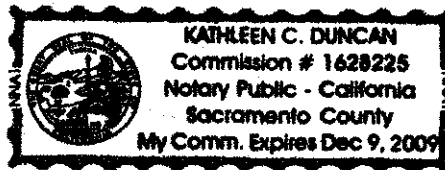
On April 5, 2007 before me, Kathleen C. Duncan, personally
Notary Public
appeared Mohinder S. Sandhu

- ☒ Personally known to me
☐ Proved to me on the basis of satisfactory evidence

To be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature //ORIGINAL SIGNED BY//



LEGAL DESCRIPTION

Real property in the City of Richmond, County of Contra Costa, State of California, described as follows:

A portion of Lot 225, as shown on the Map of San Pablo Rancho, filed March 1, 1894, in the Office of the County Recorder of Contra Costa County, described as follows:

Beginning at a point on the southern line of the parcel of land described in the Deed to Western Title Guaranty Company, Contra Costa County Division, recorded October 24, 1958, in Book 3252, Official Records, Page 18, at the western line of the parcel of land described in the Deed to County of Contra Costa, recorded June 26, 1946, in Book 842, Official Records, Page 138; running thence along said southern line North 86° 23' 30" West 495.73 feet to the western line of the parcel of land described in the Deed to Beatrice Martin, recorded October 24, 1958; thence along the last named line North 3° 36' 30" East 345 feet to a point on the northern line of the said Western Title Guaranty Company Parcel; thence along the last named line North 86° 23' 30" West 284.02 feet; thence South 3° 36' 30" West 225 feet to the northeastern corner of the parcel of land described in the Deed to Mordecai Land and Investment Company, recorded January 7, 1964, in Book 4526 Official Records, Page 540; thence North 86° 23' 30" West 330 feet; thence South 3° 23' 30" West 120 feet to the southern line of the land described in said Deed; thence North 86° 23' 30" West 188.45 feet to the eastern line of railroad Lot E, as shown on said Map of San Pablo Rancho; thence along the last named line South 4° 00' West 341.89 feet; thence South 86° 30' East 598.01 feet; thence North 4° 00' East 301.89 feet; thence South 86° 30' East 643.92 feet to the said western line of the County of Contra Costa Parcel; thence along the last named line North 12° 06' East 40.45 feet to the point of beginning.

APN: 408-060-012

First American Title

LEGAL DESCRIPTION

Real property in the City of Richmond, County of Contra Costa, State of California, described as follows:

A portion of Lot 225, as shown on the Map of San Pablo Rancho, filed March 1, 1894, in the Office of the County Recorder of Contra Costa County, described as follows:

Beginning at a point on the southern line of the parcel of land described in the Deed to Western Title Guaranty Company, Contra Costa County Division, recorded October 24, 1958, in Book 3252, Official Records, Page 18, at the western line of the parcel of land described in the Deed to County of Contra Costa, recorded June 26, 1946, in Book 842, Official Records, Page 138; running thence along said southern line North 86° 23' 30" West 495.73 feet to the western line of the parcel of land described in the Deed to Beatrice Martin, recorded October 24, 1958; thence along the last named line North 3° 36' 30" East 345 feet to a point on the northern line of the said Western Title Guaranty Company Parcel; thence along the last named line North 86° 23' 30" West 284.02 feet; thence South 3° 36' 30" West 225 feet to the northeastern corner of the parcel of land described in the Deed to Mordecai Land and Investment Company, recorded January 7, 1964, in Book 4526 Official Records, Page 540; thence North 86° 23' 30" West 330 feet; thence South 3° 23' 30" West 120 feet to the southern line of the land described in said Deed; thence North 86° 23' 30" West 188.45 feet to the eastern line of railroad Lot E, as shown on said Map of San Pablo Rancho; thence along the last named line South 4° 00' West 341.89 feet; thence South 86° 30' East 598.01 feet; thence North 4° 00' East 301.89 feet; thence South 86° 30' East 643.92 feet to the said western line of the County of Contra Costa Parcel; thence along the last named line North 12° 06' East 40.45 feet to the point of beginning.

APN: 408-060-012

I declare under penalty of perjury that
this is a true and correct copy of the
attached document.

Date: 5/23/07 Signed: //ORIGINAL SIGNED BY//

END OF DOCUMENT